

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Donald E. Padgett,

Plaintiff,

v.

Colonel Ronaldo Myers

Defendant.

C/A No. 3:04-cv-22672-GRA

ORDER

[Written Opinion]

This matter is before the Court upon the filing of this action by Plaintiff seeking relief pursuant to 42 U.S.C. § 1983 on October 21, 2004.

On February 4, 2005, Defendant filed a motion for summary judgment. On February 9, 2005, Magistrate McCrorey sent Plaintiff a Roseboro Order directing Plaintiff to respond to the summary judgment motion within 34 days. That mail was returned to the Court with a notation that Plaintiff had been released and had left no forwarding address. Court support personnel were informed after inquiry that Plaintiff had not been released and was still an inmate. On May 9, 2005, Magistrate McCrorey filed an Order allowing Plaintiff 15 days in which to notify the court as to whether he wished to continue to prosecute this action. That Order was mailed to Plaintiff and returned to the Court as undeliverable because Plaintiff's inmate number was not specified. The Order was re-mailed to Plaintiff on May 16, 2005 with Plaintiff's inmate number included in the address. On May 23, 2005 that mailing was returned as undeliverable with the envelope marked "Released, Left No Address." On May 31,

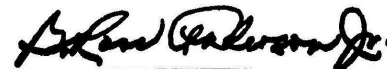
2005, Magistrate McCrorey issued a Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C.. The magistrate recommended that this action be dismissed pursuant to Fed. R. Civ. Proc. 41(b) due to Plaintiff's lack of prosecution.

Since the issuance of that Report and Recommendation, this Court has been informed that Plaintiff is deceased. See attached death certificate verifying that Plaintiff died on January 30, 2005 of natural causes.

Therefore, the above-captioned case is dismissed *without prejudice* due to Plaintiff's death. Plaintiff's estate, however, is free to bring this action in the future. Plaintiff's estate is hereby apprised that any such civil action must be filed before the applicable statute of limitations period expires. The Clerk of Court shall send a copy of this Order to Plaintiff's last known address¹.

IT IS THEREFORE ORDERED that this action be DISMISSED *without prejudice*.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

June 23, 2005

NOTICE OF RIGHT TO APPEAL

Plaintiff (or Plaintiff's estate) is hereby notified that he (it) has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.

¹4460 Broad River Road, Columbia, SC 29210